



IT IS THEREFORE ORDERED that the Hearing Officer's Recommended Findings of Fact, Conclusions of Law and Order which is attached hereto and incorporated by reference herein shall be, and the same hereby is, adopted as the final order of this commission.

**Dated: March 21, 1980**

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION  
311 West Washington Street  
Indianapolis, Indiana 46204**

STATE OF INDIANA    )  
                                  ) SS  
COUNTY OF MARION )

**ROBERTA J.F. GREATHOUSE,**  
Complainant,

**DOCKET NO. 08318**

vs.

**STOKELY VAN CAMP, INC.,**  
Respondent.

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

On December 21, 1979, the complaint filed by Roeberta J.F. Greathouse against Stokely-Van Camp, Inc, was heard on the record before this Hearing Officer.

Complainant Roeberta J.F. Greathouse was present at said hearing and proceeded *pro se*. Respondent Stokely Van Camp, Inc., was represented by counsel, Michael R. Maine and John W. Purcell. At the conclusions of the presentation of the complainant's case, the Respondent moved for a directed finding in favor of the Respondent and against the Complainant. On the basis of the sworn testimony and evidence presented by the Complainant to the Hearing Officer, her deposition testimony read into the record at the hearing, exhibits offered by Respondent during cross-examination of the Complainant, and being duly advised in the premises the Hearing Officer has determined that the Respondent's motion should be granted and hereby recommends the entry of the following Findings of Fact, and Conclusions of Law, and Order.

## **FINDINGS OF FACT**

1. On November 3, 1976, Complainant filed the complaint herein alleging that on October 29, 1976 or November 1, 1976, the Respondent had discharged Complainant because of her race, thereby committing unlawful discrimination in employment.
2. Complainant is a Black, female citizen of the State of Indiana and Respondent is a corporation doing business in the State of Indiana and employs more than six (6) persons.
3. At the time of her discharge, the Complainant had been employed as a security guard for Respondent at its facility located at 2002 South East Street, Indianapolis, Indiana for approximately one and on-half years.
4. Mr. Lee Paulsen was responsible for hiring the Complainant initially and, throughout her employment with Respondent, was the Complainant's supervisor.
5. Written rules and memoranda on the duties of security guards and on standards of conduct and performance were maintained in a notebook at each guard station, and Complainant admitted having access to and having read at least part of such rules and memoranda.
6. By her own admission, the Complainant had difficulties performing certain duties which were performed by all guards of Respondent's facility, including the accurate weighing of trucks delivering produce to the plant and the making of clock rounds to prove regular plant inspections for insurance purposes.
7. In April 1976, the Complainant received a written performance evaluation from Mr. Paulsen, which gave her a below average rating and specified her problems with attitude and performance of her truck weighing duties. The evaluation also referred to Complainant's failure to abide by the rule prohibiting the wearing of personal firearms. This written evaluation bears the Complainant's signature at the bottom.
8. The Complainant's problems with weighing trucks were also called to her attention orally by Mr. Paulsen, and other employees attempted to help her correct her problems by instructing her on proper truck weighing procedures.

9. The Complainant's clock round responsibilities were explained by written memorandum to all guards and were demonstrated personally by Mr. Paulsen, and Complainant's failure to make such rounds properly were expressly pointed out to her by Mr. Paulsen in June 1976.

10. Although the Respondent had a written rule prohibiting guards from wearing personal guns on duty, which rule was in effect before Complainant's date of hire and which the Complainant was informed of at least as early as her April 1976 performance evaluation, the Complainant admitted wearing her personal gun on duty after that time.

11. Although the Respondent had a written rule requiring security guards to check identification of all hourly employees entering the plant, the Complainant admitted having violated that rule openly.

12. Complainant admitted that, without provocation, she called Mr. Paulsen a "two-faced sneaking son of a bitch" over the plant loud speaker system.

13. As admitted by the Complainant, on another occasion and again without provocation, she called Mr. Paulsen a "God damned Quaker" over the plant loud speaker system.

14. The Complainant also admitted having called Mr. Paulsen a "god damned Quaker to his face.

15. In October 1976, without any reason to believe that she was protecting herself from the imminent use of unlawful force or reason to fear for her own safety, the Complainant, who is trained in the martial arts, assaulted and battered Mr. Paulsen while on duty and on Respondent's premises. Mr. Paulsen did not retaliate. Complainant was thereafter discharged on October 29, 19756.

16. On numerous key points, Complainant's testimony at the hearing was internally inconsistent directly contradicted by exhibits and by her prior sworn deposition testimony, and was filled with unexplained lapses of memory.

17. No credible evidence was presented indicating any disparate treatment of Complainant or of other blacks by the Respondent or of disparate impact of the Respondent's policies against Complainant or other blacks.

18. Because of the absence of an unlawful discriminatory practice Complainant has suffered no damages cognizable under IC 22-9-1.

19. Any Conclusion of Law which should have been deemed to be a Finding of Fact is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Indiana Civil Rights Commission has jurisdiction over the subject matter and the parties.

2. The complaint was timely filed.

3. The Respondent is a "person" as that term is defined in IC 22-9-1-3(a).

4. The Respondent is an "employer" as that term is defined in IC 22-9-1-3(h).

5. The following allocation of proof governs this proceeding: (1) the Complainant may establish a prima facie case by proving that she is black, that she was able to perform the job satisfactorily, that she was nevertheless terminated, and that the job thereafter remained open to individuals of her qualifications; (2) if the Complainant carries that burden, the Respondent may rebut that prima facie case by showing a legitimate, non-discriminator reason for the discharge; and (3) upon such rebuttal, the Complainant can prevail only by proving that the Respondents stated reason was merely a pretext for a racially motivated discharge. [See *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973)].

6. In view of her admitted shortcomings with the performance of significant elements of her job, the Complainant has not satisfied her initial burden of proving that she was capable of performing the duties of the job of security guard in a satisfactory manner and has not established a prima facie case.

7. Even had the Complainant carried that burden, sufficient evidence was adduced during the Complainant's affirmative case to establish that the Complainant knowingly violated Respondent's rules and orally and physically assaulted and battered her supervisor and that the Respondent therefore had a legitimate nondiscriminatory reason for the discharge – insubordination.

8. The only evidence of pretext was the Complainant's unsubstantiated testimony that Mr. Paulsen used a racial epithet because she did not place his name as a reference for an application for membership in the Fraternal Order of Police, and had earlier told her racial jokes, which she could not, however, remember. In view of the multiple, material contradictions and omissions in her testimony, the divergence in her testimony from documentary evidence and from her prior sworn testimony on deposition, her demeanor on the witness stand, and the inherent implausibility of her account, the Complainant's scant testimony regarding pretext is not credible.

9. The failure to grant Respondent's motion for a directed finding would be a violation of the Indiana Civil Rights Commission's statutory obligation to protect employers from unfounded charges of discrimination. [IC 22-9-1-3(c)].

10. The Respondent is entitled to prevail in this proceeding as a matter of law and fact.

11. If, upon all the evidence, it is found that a person has not engaged in an unlawful discriminatory practice or violation of IC 22-9-1, an order dismissing the complaint should be issued. [IC 22-9-1-6(K) (3)].

12. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

### **ORDER**

The Complaint of Complainant, Roeberta J.F. Greathouse, shall be dismissed for reasons aforestated.

**Dated: January 29, 1980**